

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SEVEN

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BANNUM PLACE OF SAGINAW, LLC,

Case No. 07-CA-207685 et al.

Respondent,

and

Case Nos:     07-CA-207685  
                  07-CA-211090  
                  07-CA-215356

LOCAL 406, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS (IBT),

Charging Party Local 406,

and

ERNIE AHMAD, an Individual

Charging Party Ahmad.

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**RESPONDENT BANNUM PLACE OF SAGINAW, LLC'S EXCEPTIONS TO THE  
DECISION OF THE ADMINISTRATIVE LAW JUDGE DATED MAY 29, 2020**



Pursuant to § 102.46(a) of the Board's Rules and Regulations, Respondent Bannum Place of Saginaw, LLC ("Bannum") hereby files the following exceptions to the Decision of Administrative Law Judge Ira Sandron ("Judge") dated May 29, 2020, based upon evidence presented during the hearing following issuance of the Consolidated Complaint ("Complaint") on October 20, 2019. Bannum takes exception to the following:

1. The Judge's failure to adhere to his ruling that he would permit Bannum to present evidence regarding Bannum's motion to dismiss that the Board lacks jurisdiction as Bannum is a joint-employer with the Federal Bureau of Prisons. [JD 1:17-23].
2. The Judge's finding that Bannum was not a joint and/or co-employer of the Federal Bureau of Prisons. [JD 1:14-23]
3. The Judge's findings regarding the testimony and credibility with regard to Gregory Price was inaccurate and ignored evidence to the contrary. [JD 4:27-30].
4. The Judge's findings regarding the testimony and credibility with regard to Ernie Ahmad was inaccurate and ignored evidence to the contrary. [JD 4:32-35].
5. The Judge failed to permit Bannum to cross examine, prejudicing Bannum's factual record and leading to an inaccurate creditability and factual finding by the Judge. [JD 4-5:37-4]
6. The Judge mischaracterized the testimony of Bannum's President, John Rich. [JD 5:5-14]
7. The Judge's findings regarding John Rich's testimony and credibility are not supported by record evidence, are contrary to the record, and/or are implausible. [JD 5:5-14]
8. The Judge's findings ignore record evidence of his role in the organization and un rebutted testimony regarding termination. [JD 5: 5-14]
9. The Judge's finding as to the testimony and credibility of Kenneth Schram and his testimony are inaccurate and ignore the testimony and record. [JD 5: 19-39; 6: 1-4]
10. The Judge's findings with respect to Kenneth Schram's changing his testimony are not accurate. [JD 5 25-31]
11. The Judge ignored evidence supporting Kenneth Schram's testimony. [JD 5: 19-39; 6: 1-4]
12. The Judge ignored evidence and made clearly erroneous conclusions with respect to the testimony of Kenneth Schram. [JD 5: 19-39; 6: 1-4]
13. The Judge erred in making a "missing witness" rule determination with respect to Katrina Teel. [JD 6: 9-30]



14. The Judge's position with respect to Katrina Teel's role in the case is not supported by record evidence and testimony. [JD 6: 15-30]
15. The Judge's findings that Bannum's counsel declined his offer to accommodate the testimony of Katrina Teel is inaccurate and ignores the fact she was unavailable and Counsel was denied a motion to postpone the hearing. [JD 6: 10-35; n. 7]
16. The denial of Bannum's motion to postpone the hearing unjustly prejudiced Bannum. [JD 6: 10-35; n. 7]
17. The Judge's finding that the Respondent has admitted Board jurisdiction is inaccurate. [JD 7: 11-12]
18. The Judge's finding that Schram told Turner and Price they could leave for their lunch and they could call that their lunch hour is inaccurate. [JD 7: 39-43; 8: 1]
19. The Judge ignored record evidence as to Price's credibility and attendance. [JD 8: 1-5]
20. The Judge failed to properly acknowledge the inconsistent testimony of General Counsel's witnesses regarding their attendance at the alleged union meetings. [JD 8: 7-9]
21. The Judge's credited inconsistent testimony of multiple General Counsel witnesses and failed to properly assess their credibility. [JD 8: 7-18]
22. The Judge ignored testimony and records that demonstrate false testimony of Price. [JD. 8; 7-9; 20-33]
23. The Judge made an improper conclusion of law and ignored facts in evidence with regard to Price's testimony regarding an essential question of fact. [JD. 8: 36-38]
24. The Judge ignored the inconsistent testimony of Price and record evidence, and found that Price had attended a meeting on August 21, 2017. [JD. 8: 36-38; 9: 1-4]
25. The Judge failed to properly assess the credibility of Price, despite providing facts that were not consistent with his testimony and his inability to recall facts. [JD. 8: 36-38; 9: 1-4]
26. The Judge's findings that Turner and Price attended a meeting, despite record evidence contradicting the testimony. [JD. 9: 1-10]
27. The Judge ignored facts and evidence related to Price's allegation he attended a meeting on August 21<sup>st</sup> and found that Price spoke with Schram, despite record evidence that demonstrates neither Price nor Schram were present at the time. [JD. 9: 1-26]
28. The Judge made a conclusion of fact unsupported by records as to Schram's presence at the building. [JD. 9: 19-22]



29. The Judge made a determination that a conversation took place, despite the record evidence contrary to the finding and affidavit and hearing testimony of Price. [JD. 9: 1-26]
30. The Judge failed to utilize the missing witness rule against General Counsel with respect to Melanie Turner and Union organizer, Grant Hemenway. [JD. 7: 1-44; 8: 11-18; 9: 1-26]
31. The Judge improperly permitted and relied on the hearsay testimony of Novak. [JD. 8: 26-34]
32. The Judge improperly ruled as fact that Schram told Ahmad that if the employees formed a union, the facility would be shut down. [JD. 10: 10-14]
33. The Judge improperly credited the testimony of Nash with respect to a meeting in October or early November with Nash and Ahmad. [JD. 10: 15-23]
34. The Judge improperly failed to recognize the voice message from Schram to Nash contained no threats of closure or wage reduction. [JD. 10: 25-28]
35. The Judge failed to properly address the inconsistency between the allegations that Price requested and voluntarily received a copy of Bannum's contract with the Bureau of Prisons and financials, but the same day allegedly told a Bureau of Prison's official Bannum would not bargain with the union and not seek an extension of the contract with the Bureau of Prisons. [JD. 11: 15-22, n. 11]
36. The Judge failed to address the inconsistency between Matt Call's testimony and the lack of any allegation of failure to bargain after the union election and testimony and fact that the facility continues to operate after the contract in place at that time expired. [JD. 11: 15-22, n. 11]
37. The Judge made an illogical finding of fact not supported by the evidence, by stating, "Schram did not explicitly approve this, but price testified that he clocked in and then left for the meeting [NLRB representation hearing on September 27, 2017] because Schram had previously given him permission to go to the union meeting on the clock." [JD. 11: 1-39]
38. The Judge leaves out important evidence and facts regarding Price's actions following the representation hearing on September 27, 2017. [JD. 11: 41-42]
39. The Judge failed to address important facts regarding Price's duties on September 27, 2017.
40. The Judge ignores relevant facts regarding Schram and the discipline of Price. [JD. 12: 1-6]



41. The Judge improperly credits Price for abandoning his job and ignores the contemporaneous exhibits that contradict Price's testimony regarding a DHO hearing scheduled at Bay County Jail. [JD 11: 33-42; 12: 1-26]
42. The Judge's credit for Price not coming to work for a scheduled hearing is not supported by reasonable facts or inferences. [JD 11: 33-42; 12: 1-26]
43. The Judge improperly failed to address that fact that Price clocked in to work without any permission. [JD 11: 33-42; 12: 1-26]
44. The Judge failed to address Price's testimony regarding why he clocked in nearly 7 hours early. [JD 11: 33-42; 12: 1-26]
45. The Judge abused his discretion in crediting Price for clocking in nearly 7 hours early, Price's schedule for September 27, 2017, Price's testimony that he was not provided permission to not work on September 27, 2017, Price's testimony he was not subpoenaed for the hearing, Price's testimony that no Union representative told him he could leave his job, the lack of any other employee who had clocked in and left for a full day, plus an hour of overtime, Price's testimony that he clocked in and out for 9 hours, including an hour of overtime because Bannum was cracking down on overtime, and General Counsel's exhibit of a recording of Schram speaking to Price, in which Schram was unaware he was being recorded, on September 28, 2017 in which Schram states Price was to go to the DHO hearing and that Price had not requested the day off. [JD 11: 33-42; 12: 1-26]
46. The Judge improperly held Schram contradicted his testimony regarding his discussion with Teel. [JD. 12: 18-27]
47. The Judge failed to address the full testimony of Schram with regard to his conversations with Teel. [JD. 12: 18-27]
48. The Judge failed to properly address the credibility of Schram and Price by ignoring evidence with respect to Price's attendance at the September 27, 2017 hearing. [JD 11: 33-42; 12: 1-26]
49. The Judge failed to address facts regarding the time records and Price's schedule on September 27, 2017. [JD 11: 33-42; 12: 1-26]
50. The Judge's findings regarding Rich's decision to terminate are not substantiated by record evidence or applicable law. [JD. 12: 29-39]
51. The Judge's finding that Ernie Ahmad's interview is un rebutted is not accurate. [JD. 13: 8-14]
52. The Judge failed to properly address his finding that Schram asked Ahmad's credibility regarding union status. [JD. 13: 15-22]



53. The Judge failed to properly address the testimony of Schram and Ahmad, and record evidence regarding change of schedules. [Tr. 13: 31-41; 14: 1-3]
54. The Judge ignored the testimony of Schram that vacation slip forms were already present when Schram became Bannum's Director and Ahmad's limited work schedule and interaction with other employees with respect to process. [JD. 14: 29-41; 15. 15: 1-41]
55. The Judge's conclusions of fact with respect to Ahmad's requests are inconsistent with testimony, facts, and record evidence. [JD. 14: 29-41; 15. 15: 1-41]
56. The Judge failed to properly address the testimony and facts related to Ahmad's termination. [JD. 14: 29-41; 15. 15: 1-41; 16: 143, n. 17; 17, 1-47; 18, 1-4]
57. The Judge's conclusion that Price and Schram had a discussion on August 21 is not substantiated by record evidence. [JD. 18: 21-26]
58. The Judge's findings regarding the allegation that Schram violated Section 8(a)(1) by threatening Price that the facility would be shut down in connection with employee seeing union representation ignores the records and improperly misapplies the law. [JD. 18: 45-46; 19: 1-5]
59. The Judge failed to consistently apply his lack of support to find, "About September 20, [Schram] told employees that they were supposed to communicate with him and tell him what was going on regarding the union organizing drive, in his findings regarding the credibility of the General Counsel's witnesses and Price's allegations. [JD. 19, 20-23]
60. The Judge's misapplied facts, ignored facts in the record, and misapplied the law with respect to his finding of a violation of Section 8(a)(5). [JD. 19: 28-44; 2016]
61. The Judge inappropriately applied facts outside the Complaint and failed to address the effect on credibility of the witnesses. [JD. 20: 1-16]
62. The Judge abused his discretion by finding against Bannum on allegations that were not alleged in the Complaint and for which General Counsel did not Amend the Complaint without providing Bannum notice and opportunity to respond. [JD. 20: 1-16]
63. The Judge improperly failed to apply his finding regarding the call with Nash to his other findings regarding the credibility of Nash and Ahmad's other allegations. [JD: 18-33]
64. The Judge failed to properly apply the law with respect to his finding against Bannum related to the 8(a)(1) allegations. [JD. 20: 35-41; 18 -20]
65. The Judge improperly found animus against Bannum based on facts unrelated to the decision maker. [JD. 22: 10-21]



66. The Judge improperly assesses and makes conclusions regarding the actions and statements made by Schram against Bannum in the termination of Price. [JD. 22:15-20]
67. The Judge improperly applied the law and facts regarding the timing of Price's discharge. [Tr. 22: 25-28]
68. The Judge improperly applied the law and facts regarding investigation of Price's discharge. [JD. 22: 30-37]
69. The Judge's finding of a cursory investigation is not supported by the record. [JD. 22: 30-37]
70. The Judge failed to address the critical fact that there is no dispute Price clocked in 7 hours prior to his shift without authorization, left in the middle of his shift without authorization, failed to attend a hearing, and worked unauthorized overtime on September 27, 2017. [JD. 22: 30-37]
71. The Judge's position that Bannum maintained "incredibly lenient" policy on attendance is not supported by the record. [JD. 22: 44-46; Tr. 23]
72. The Judge erred in stating, "Clearly, the discharge of Price was far out of proportion to the way the Respondent disciplined other employees, some of whom had repeated incidents of misconduct." [JD. 23: 27-32]
73. The Judge improperly failed to take into consideration the serious and differentiation of Price's actions on September 27, 2017 and improperly failed to compare the factual difference between the examples he cited and Price's conduct. [Tr. 22: 44-46; Tr. 23; Tr. 24: 1-21]
74. The Judge inaccurately states that Price was disciplined more severely than other employees who engaged in similar or more egregious misconduct. [JD. 23: 29-32]
75. The Judge improperly states General Counsel supported the animus prong of *Write Line*. [JD. 23: 35]
76. The Judge failed to properly address the application of Bannum's handbook, policies, and the record evidence with respect to his conclusion that Bannum would not have discharged Price other than for his protected activities. [JD. 23: 37-39]
77. The Judge improperly concluded Price's termination would not have occurred other than for his termination. [JD. 23: 37-39]
78. The Judge misapplied the law with respect to his finding that Price's termination would not have occurred other than for his termination. [JD. 23: 37-39]



79. The Judge was incorrect in fact and law in concluding, “Granted, Price could have exercised better judgment and returned to work immediately after the R case concluded.” [JD. 23: 41-42.]
80. The Judge’s finding that Schram condoned or tacitly approved Price’s conduct on September 27, 2017. [JD. 23: 42-43]
81. The Judge omits facts and mischaracterized the testimony of witnesses regarding Schram’s actions on September 27, 2017 with regard to Price’s activities and knowledge. [JD 23: 41-47]
82. The Judge is incorrect that Price did not do anything with respect to Price on September 27, 2017. [JD 23: 41-47]
83. The Judge’s findings with regard to Teel and her initiation of the investigation are not supported by the evidence. [JD. 24: 1-3]
84. The Judge’s findings crediting Price are unsubstantiated by the record and the Judge ignores contemporaneous statements made by Schram to Price regarding the hearing at Bay County. [JD. 24]
85. The Judge’s finding regarding the hearing and credibility of Price and Schram regarding the hearing at Bay County. [JD. 24]
86. The Judge’s findings regarding other employees. [JD. 24]
87. The Judge’s finding that the Respondent failed to rebut the General Counsel’s *prima facie* case.[JD. 2. 20-21]
88. The Judge’s failure to assess the credibility and fact Schram was no longer an employee of Bannum at the time of his testimony, had no personal interest in the outcome of the case, was subpoenaed, was asked to come in each day off of his regular and current job for 3 days to attend the hearing, drove over 2 hours to come to the hearing each way, and the events in question occurred two and one-half years prior to the hearing. [JD. 22 - 24]
89. The Judge’s failure to adequately assess and consider the consistency of a former employee’s [Schram] testimony with Price’s secret voice recording of Schram on September 28, 2017 and that Schram had no idea there was such a recording until after he was sequestered for two days and over two years after the fact. [JD. 22-24]
90. The failure of the Judge to only assess the failure to call a witness against Bannum and not the General Counsel, when the General Counsel had the burden of proof to establish a *prima facie* case regarding Price’s termination. [JD. 22-24]
91. The failure of the Judge to acknowledge Rich’s testimony and lack of evidence of animus on Rich as the decision maker. [JD. 22-24]



92. The Judge's decision on Rich's determination to terminate Ahmad.[JD. 24]
93. The Judge's finding that Schram spoke with Ahmad on August 7, 2017 with Ahmad, Price and Turner. [JD. 24: 25-30]
94. The Judge's failure to assess the General Counsel's failure to call Turner. [JD. 24: 25-30]
95. The Judge's conclusion that Schram asked if there was a union at Ahmad's full-time job and that Ahmad said he was the union's chapter president. [JD. 24: 28-30]
96. The Judge's finding of animus in Nash's voice mail of November 5, 2017. [JD. 24: 32-35.]
97. The Judge's finding of animus from Nash's voice mail is inconsistent with the Judge's earlier finding that he found no violation related to the call from Schram and Nash. [JD. 20: 22-33; JD. 24: 32-35]
98. The Judge's finding of implied animus. [JD. 24: 37; 27; 6]
99. The Judge's failure to find any adverse inference from the lack of testimony from any other witness from the bargaining unit of animus. [JD. 24: 37; 27; 6]
100. The Judge's credibility and findings regarding Ahmad, despite his repeated failure at hearing to answer seminal questions regarding his absences. [JD. 24-28]
101. The Judge's finding of a cursory investigation. [JD. 25: 3-7]
102. The Judge's finding of disparate treatment in discharging Ahmad. [JD. 25-30]
103. The Judge's finding that Ahmad's discipline was disproportionate. [JD. 25-30]
104. The Judge's failure to assess relevant facts regarding Ahmad's schedule and staffing. [JD. 25-30]
105. The Judge's failure to assess relevant facts regarding practice regarding working for other employees and testimony of Bannum's Director. [JD. 25-30]
106. The Judge's failure to assess and apply the handbook, work rules, Standard of Conduct and Work Rules. [JD. 25-30]
107. The Judge's failure to assess the repeated nature of Ahmad's absences and his failure to report to work on days he had previously asked to not work. [JD. 25-20]
108. The Judge's failure to assess the difference in Ahmad's discipline and other employees. [JD. 25-30]



109. The Judge's finding that General Counsel established a prima facie case that Bannum took action against Ahmad in November.
110. The Judge's failure to assess the efforts of Schram to find coverage for Ahmad's request for time off. [JD. 25-30]
111. The Judge's failure to support his findings with any records or documents to demonstrate any other employee failed to report to work more than one time after requesting time off. [JD. 25: 10-30]
112. The Judge's failure to address Schram had to work in Ahmad's place when Ahmad called off on days Schram had denied off after looking for coverage. [JD. 25-30]
113. The Judge's findings about the reason for CAs taking 2 consecutive days off as a reason for changing schedules. [Tr. 25: 24-32]
114. The Judge's finding that changing schedules was due to Ahmad's union activities and sympathies. [JD. 25: 24-32]
115. The Judge's failure to address and take into account Schram's duties as director to change schedules for all employees and staffing. [JD. 25: 24-32]
116. The Judge's findings regarding the documentary evidence of denial of time off. [JD. 25]
117. The Judge's finding regarding time off request of Nash and Ahmad. [JD. 25: 37-46; 26]
118. The Judge's finding that Respondent failed to rebut the presumption that denial of Ahmad's vacation requests was improperly motivated. [JD. 25: 37-46; 26]
119. The Judge's failure to assess the lack of evidence of any other employee who had required time off and not come in to work. [JD. 25: 37-46; 26]
120. The Judge's finding that Schram and Rich's testimony with respect to submission of a doctor's slip contradicted. [JD. 26: 4-16]
121. The Judge's finding and inference against Schram regarding requesting a doctor's note when he called off after he was denied time off. [JD. 26: 4-16]
122. The Judge's failure to assess the combative testimony of Ahmad in his assessment of the credibility of Schram's decision to request a doctor's note. [JD. 26: 4-16]
123. The Judge's failure to assess the limited amount of work time Ahmad worked in his short employment tenure when assessing his lack of prior discipline. [JD. 26]



124. The Judge's failure to accurately and completely look at the facts related to the call offs of Ahmad and the decision to ask for a doctor's note and discharge of Ahmad. [JD. 26]
125. The Judge's findings regarding the events leading to Ahmad's discharge. [JD. 26: 19-45]
126. The Judge's findings against both Rich and Schram's testimony that Ahmad should have gone to a doctor on a Sunday when he was sick. [JD. 26: 19-45]
127. The failure of the Judge to acknowledge that Schram was sequestered during Rich's testimony and the consistency of their testimony on the doctor's note. [JD. 26: 19-45]
128. The Judge's conclusion that Schram should have called the doctor if he wanted more information. [Tr. 26]
129. The Judge's failure to take into account at any time in his conclusions Ahmad's testimony that he signed an application that he acknowledged at the hearing was not true so he could get a job with Bannum. [Tr. 24-28]
130. The Judge's decision that no doctor's notes were received for employees that were absent. [Tr. 26]
131. The Judge's conclusion inference that Rich's decision to terminate Ahmad after consultation with Allen and Teel. [Tr. 26]
132. The Judge's conclusion that Bannum failed to rebut the presumption that Ahmad's discharge was based upon his union sympathies and activities. [Tr. 27: 1-2]
133. The Judge's conclusion that Ahmad had a perfect record, when he was a part-time employee for only a year. [Tr. 27: 1-6]
134. The Judge's conclusions regarding other employees and Ahmad's termination that were not similar. [Tr. 27: 1-6]
135. The Judge's conclusion that Ahmad's discharge violated Section 8(a)(3) and (1) of the Act. [Tr. 27: 1-6]
136. The Judge's finding that denying Ahmad's vacation request violated Section 8(a)(3) of the Act. [Tr. 27: 37-44]
137. The Judge's inconsistent finding that denial of Ahmad's request for vacation was an unfair labor practice, where it had not changed its policy regarding a vacation request slip and the ability to approve or deny other employee requests. [Tr. 27: 26-44; 28: 1-10]
138. The Judge's Conclusions in paragraphs 1, 3, 4, and 5 at Page 28 of his Decision and his Remedy and Recommended



Respectfully submitted,  
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